

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

DON HILL,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

Case No.: 3:11-cv-01014-HU

**OPINION AND ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS**

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SIMON, District Judge.

On February 4, 2013, United States Magistrate Judge Dennis J. Hubel filed Findings and Recommendation (“F&R”) in the above captioned Social Security case. Dkt.20. Judge Hubel recommended that the Commissioner’s decision, Dkt. 11, should be reversed and the case be remanded for further proceedings. The Commissioner (“Defendant”) has timely filed an objection. Dkt. 22.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations,

“the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

The Court has reviewed *de novo* those portions of Judge Hubel’s findings and recommendation to which Defendant has objected. The Court agrees with Judge Hubel’s reasoning regarding the ALJ’s decision and adopts those portions of the findings and recommendation.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe a standard of review. Indeed, where there are no objections, “[t]here is no indication that Congress . . . intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Furthermore, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

For those portions of Judge Hubel’s findings and recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

Therefore the Court orders that Judge Hubel’s findings and recommendation, Dkt. 20, is ADOPTED. The above captioned case is accordingly reversed and remanded for further proceedings consistent with Judge Hubel’s findings and recommendation.

IT IS SO ORDERED.

Dated this 26th day of March, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge